



## DIRECTIVE 05-9

September 9, 2005

### HISTORICALLY SIGNIFICANT PROPERTY

Purpose. This Directive provides information to assessors about how the statutory process pursuant to LB 66, Neb. Laws 2005 will work and their duties and responsibilities with respect to historically significant property that qualifies for historic rehabilitation valuation.

Overview. In 2004, the voters approved an amendment to Article VIII, Section 2 of the Nebraska Constitution which provided:

... the Legislature may by general law, and upon any terms, conditions, and restrictions it prescribes, provide that the increased value of real property resulting from improvements designed primarily for the purpose of renovating, rehabilitating, or preserving historically significant real property may be, in whole or in part, exempt from taxation.

In 2005, the Legislature passed LB 66 (codified at Neb. Rev. Stat. §§ 77-1385 through 77-1394) which provided a valuation preference for historically significant property that has been renovated or rehabilitated.

The statutes set up a valuation preference for historically significant property that has been renovated rather than a complete property tax exemption. The law limits the preference to properties that are deemed "historically significant" as opposed to any property over a certain age. There are a number of steps that must be met before the valuation preference would apply to the property. The property owner must apply to have his or her property qualify. The State Historical Preservation Officer (SHPO) is involved in many of the determinations necessary to receive the preference.

1. The property must be deemed historically significant.
2. A "preliminary certificate" must be obtained. It is this step that sets the "base" value for the property.
3. When the work on the property is complete, a certificate of rehabilitation is issued and the property is to be valued at no more than its base value for eight years. In years 9-11, market value is added incrementally until at the beginning of year 12, the value for the property is at actual value.

The valuation benefit only applies to property for which a final certificate of rehabilitation has been issued after January 1, 2006.

Historically Significant Property. (77-1385, 77-1386, and 77-1387) The first step in obtaining historic rehabilitation valuation is the determination that the property involved is historically significant. The property that is defined by the act as historically significant revolves around the National Register of Historic Places. The property might be listed on the register or it might be part of a district that is listed in the Register and is historically significant. There is also a mechanism for the adoption of local landmark ordinances under which property may be determined to be historically significant but the local ordinance must have criteria for determining historically significant property that follows the federal regulations dealing with the National Register of Historic Places.

Statutorily, the determination of whether a property is historically significant is made by the State Historic Preservation Officer (SHPO) after an application by the owner of the property. That application must be dealt with by the SHPO within thirty days of receipt of the application, forty-five days if the SHPO needs to do a site inspection.

The assessor will not be directly involved with the process of determining whether property is historically significant nor will he or she be involved with the process of issuing preliminary or final certificates of rehabilitation. The assessor will receive notification of the issuance of such certificates from the SHPO. Additionally, SHPO will keep and maintain a list of properties for which certificates are issued. The list of properties may be found at the website for the Nebraska State Historical Society at [www.nebraskahistory.org](http://www.nebraskahistory.org).

Preliminary Certificate of Rehabilitation. (77-1388) After the SHPO has determined that the property is historically significant, the owner may apply to the SHPO for a preliminary certificate of rehabilitation. The application must describe the property, including its condition immediately prior to rehabilitation, the proposed rehabilitation work and its estimated cost. The rehabilitation proposed must be “substantial”, meaning it preserves the property in a manner that significantly improves its condition and costs an amount equal to or greater than twenty-five percent of the assessed valuation. Additionally, the rehabilitation must meet the standards for rehabilitation provided in the federal regulations dealing with historic rehabilitation. The application also needs to contain a certification from the county assessor stating the assessed value that was last certified by the assessor at the time of the application. This value will become the “base” value for the property.

The SHPO will determine whether the property qualifies for the preliminary certificate of rehabilitation. It will also determine the length of the rehabilitation period which will be two years unless economically infeasible or the project is of such a magnitude that a good faith effort to complete the project would not succeed. A copy of the preliminary certificate is transmitted from the SHPO to the assessor for the county in which the property is located.

The preliminary certificate of rehabilitation is the threshold requirement for the assessor's involvement with this program. If no preliminary certificate of rehabilitation is issued, there can be no application of historic rehabilitation valuation. (See Base Valuation Section)

Base Valuation. (77-1391(3)) The base valuation is the value for the property last certified at the time of the application for the preliminary certificate. For example, if the application is filed prior to August 20, 2006, the base value would be the value for 2005. If the application is filed after August 20, 2006, the base value would be the value for 2006 certified by the assessor pursuant to Neb. Rev. Stat. §13-509. The property owner would have to contact the assessor about getting a certification from the assessor of the base value of the property for the purposes of attaching it to the application for a preliminary certificate of rehabilitation.

There is an issue that could present itself with respect to the determination of the base value when property goes from exempt to nonexempt. For example, the rehabilitation process could be started while the property is owned by an exempt organization. If the exempt entity obtains the necessary certificates, if the property later is transferred to a nonexempt entity, historic rehabilitation could be applied to the property when it becomes taxable. If the property did not have an actual value on the assessment rolls, the assessor would have to determine the base value, meaning the actual value of the property for the year prior to the issuance of the preliminary certificate of rehabilitation. That value would then become the historic rehabilitation value and would be applied to the property for the remainder of the period for which the property would qualify for historic rehabilitation valuation. However, if no preliminary or final certificates were obtained by the exempt organization owning the property at the time of renovation, a subsequent owner would not qualify for the historic rehabilitation valuation.

Final Certificate of Rehabilitation. (77-1390 and 77-1391) To obtain the historic rehabilitation valuation, the owner must obtain a final certificate of rehabilitation. In order to obtain the final certificate, the owner of the property shall provide information to the SHPO to indicate that the rehabilitation work was done in the manner that was represented to the SHPO in order to obtain the preliminary certificate. The SHPO would then issue the final certificate to the owner, with a copy to the assessor. This final certificate triggers the application of the historic rehabilitation value (base).

Valuation. (77-1391(1) and (2)) There are several issues regarding valuation that the assessor should be aware of. The first is the base value, which is the last certified value prior to the application for the preliminary certificate of rehabilitation. However, the base is not applied until the year following issuance of the final certificate of rehabilitation by the SHPO. So, in the years between the issuance of the preliminary certificate and the final certificate, value for the property is not frozen. However, once the final certificate is issued, the assessor will apply the base value to the property for eight years, beginning in the assessment year following the issuance of the final certificate of rehabilitation. The SHPO shall provide a copy of the final certificate of rehabilitation to the assessor for the county in which the property is located.

Once the base value has been applied, the value shall be no more than the base value for eight years following the issuance of the final certificate of rehabilitation. To some degree, this is analogous to base value for TIF purposes. However, unlike TIFs, the taxes collected all go to the political subdivisions levying taxes on the property and are not “split” between the political subdivisions and the local governing body responsible for paying the indebtedness incurred by the TIF project. In applying the historic rehabilitation value, the assessor shall receive a copy of the final certificate of rehabilitation from the State Historic Preservation Officer. The assessor then values the property at its base value, beginning in the next assessment year, for an eight-year period.

For this historically significant property, the value for the property can be no more than the base for eight years. This means that even if the neighborhood surrounding the property increases in value, is reappraised, or is subject to an increase from the Tax Equalization and Review Commission, the base value of the property will remain the base. However, because the statute provides that the value shall be “no more than” the base value, if for some reason the value of the property declines, the assessed value can be less than the base. If in subsequent years, the actual value of the property increases, as the value rises, the assessed value cannot exceed the base value. Because the value of the property can decline during this period, and because there is a statutory mechanism for the revocation of the final certificate of rehabilitation which would result in the application of actual value to the property, the assessor should determine the actual value of the property each year.

At the end of the eight year time frame, actual value for the property will be phased in over the next four years. In the first year, the value shall be the base plus twenty-five percent of the difference between the base and actual value. In the second year, the value shall be the base plus fifty percent of the difference between the base and actual value. In the third year, the value shall be the base plus seventy-five percent of the difference between the base and actual value. In the fourth and final year of the phase-in period, the value of the property shall be full actual value. This process will require the assessor to determine the actual value of the property during each year of the phase-in to be able to determine the amount of value to add to the base.

#### Example

Year 1—Assessor certifies base value of \$50,000.00 for a property on National Register of Historic Places.

Year 2—Assessor values property on January 1 at \$60,000.00 and property owner applies for and obtains a preliminary certificate of rehabilitation in June from the SHPO. Renovation begins

Year 3—Assessor values property on January 1 at \$65,000.00. Renovation continues on the property.

Year 4—Assessor values property on January 1 at \$65,000.00 but applies a 10% increase from TERC. The value of the property is now \$71,500.00. The renovation work is completed and a final rehabilitation certificate is issued by the SHPO.

Years 5-12—Assessor values property at no more than \$50,000.00 (base value from Year 1).

Year 13—Assessor values property at base value plus 25% of the difference between the base value and actual value. If actual value is \$140,000.00, then the value for this year should be \$72,500.00.  $(50,000.00 \text{ base value} + \$22,500.00 (140,000.00 - 50,000.00 \times .25 = 22,500.00)) = \$72,500.00$ .

Year 14—Assessor values property at base value plus 50% of the difference between the base value and actual value. If actual value is still \$140,000.00, then the value for this year should be \$95,000.00.

Year 15—Assessor values property at base value plus 75% of the difference between the base value and actual value. If actual value has increased to \$150,000.00, then the value for this year should be \$125,000.00.

Year 16—Assessor values property at its full actual value of \$150,000.00

Disqualification. (77-1391(4)) Property may be disqualified from this program. The SHPO may revoke a final certificate of rehabilitation if it is found that the property really has not been renovated in accordance with federal standards for such renovation, is no longer of historical significance in a qualified historic district, or no longer possesses the qualifications to be on the National Register of historic places. The SHPO would notify both the owner of the property and the assessor of the revocation. If the certificate is revoked, the assessor would value the property at its actual value in the assessment year following revocation. So, if the revocation occurs at any time during the current year, the following year the property would be assessed at its actual value.

There is no recapture of the difference in taxes paid based on the historical rehabilitation value and the property's actual value when the property becomes disqualified. Actual value is simply applied in the next valuation year.

Local Control. (77-1386) There is a mechanism in the act for the development of local landmark ordinances. However a political subdivision seeking to develop such an ordinance must apply for and get approval from the SHPO. If such an ordinance is approved, property owners may apply for preliminary certificates at the local level. The determination of the local political subdivision would still have to be approved by the SHPO.

Notices, Protests and Appeals. (77-1394) Decisions of the SHPO may be protested by the property owner to the SHPO within thirty days of issuance. If no protest is filed, the decision of SHPO becomes final. If a protest is filed, it must be heard by SHPO within fourteen days of receipt of the protest. The SHPO has seven days after his or her decision to send notice to the property owner. The property owner may then appeal to district court. It also appears that the assessor has protest and appeal rights as well.

For valuation purposes, after the owner obtains the final rehabilitation certificate and the property goes from its actual value to the historic rehabilitation valuation (base), the change in valuation will require a valuation notice. During the eight-year period in which the valuation can be no more than the historic rehabilitation valuation, if that value does not change, no valuation notice

is required. However, if the actual valuation drops below the historic rehabilitation valuation, then the change in valuation would require a notice of valuation change. During each of the four year actual valuation phase-in period, a valuation change notice would be required each year.

The valuation of the property may be protested by the owner of the historically significant property in the same fashion as other property. However, during the eight year period in which the historic rehabilitation period freezes value at no more than the base value, the question of whether a protest could even be entertained by the county board of equalization is an interesting one. The base value is the value on the property in the year prior to the issuance of the preliminary certificate of rehabilitation. That value would already have passed through a protest season when it was first placed on the property and the argument could be made that if there was no protest at that time, the property owner could not protest the base in the year it is applied.

The owner may also protest the value applied to the property in the event of the revocation of the final certificate of rehabilitation as well as the valuation applied to the property during the four year period of phasing in actual value. Additionally, in the event that actual value drops below the base value, the owner could protest that value as well.

Conclusion. The act provides a valuation preference for historically significant property that obtains the necessary certificates from the SHPO. That preference lasts twelve years. However, the act does not provide for an exemption from tax nor does it apply to any property that is more than a certain number of years old. The work of determining eligibility for the preference is left to the SHPO who is required to inform assessors of the issuance or revocation of the appropriate certificates.

APPROVED

/s

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